IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1183 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI NANJI BHUTA

Versus

STATE OF GUJARAT THROUGH CHIEF SECRETARY

Appearance:
1. First Appeal No. 1183 of 1983
MR KL DAVE for appellant
MR RM CHAUHAN, ld.AGP for respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant who is the original applicant of Land Reference Case No.15 of 1980 of the Court of Assistant Judge, Junagadh, has filed the present appeal under Sec.54 of the Land Acquisition Act, 1894 ('L.A. Act' for short) read with Sec.96 of the Code of Civil

Procedure, challenging the judgment and order dated 30th January 1982, passed by the learned Extra Assistant Judge, Junagadh (Reference Court). Under the said judgment, the Court accepted the Reference in part and awarded compensation as under:

(i) Towards market value of the land u/s.23(1) of the Act at the rate of Rs.125/- per Are Rs.80937.50

(ii) Amount awarded for building Rs. 5000.00

(iii) Amount for trees etc. Rs. 355.00

(iv) Amount awarded u/s.23(2) of Act by way of solatium Rs.12934.90

Total: Rs.99236.40

The Reference Court further directed that the said amount shall be paid with running interest at the rate of 6% per annum from the date of the Reference till the date of realisation after deducting the amount already paid, if any.

The Executive Engineer, Irrigation Project Division, Una, by his letter dated 5.1.1979 reported that certain lands of village Kodia were required for Macchhundhri Irrigation Scheme. Consequently, there was proposal to acquire certain lands of village Kodia on permanent basis for public purpose, in terms of the provisions of the L.A.Act. The Land Acquisition Officer, Junagadh, Bhavnagar Irrigation Project, Rajkot, started the proceedings for acquisition of the lands of village Kodia, on permanent basis, for the above referred to public purpose under the L.A. Act and for that project, along with other lands, the land of the following description owned and possessed by the appellant came to be acquired:

S.No.	H.	Are	Sq.m.	Situated in the
43	6	-	47 -	50 village Kodia.

The award in the case came to filed on 12.3.1980 and under the said award, the appellant was awarded in all, an amount of Rs.60,170.69. Against the said award, a Reference came to be preferred under Sec.18 of the L.A. Act at the instance of the appellant before the Reference Court.

2. According to the appellant, the whole of the land

bearing the said Survey Number was irrigated and yet only 1/2 of the land was treated as irrigated and the rest of the land had been treated as nonirrigated land and therefore, the price is determined accordingly. As per the say of the appellant, the land in Reference was fertile and of good quality and its market value at the relevant time was Rs.300/- per Are and yet the compensation is awarded at the rate much lower than that claimed by the appellant. The appellant has claimed in all Rs.2,44,250/- by way of compensation and as against the same, an amount of Rs.60,170.69 has been awarded under the award. The Reference Court, after appreciating the evidence brought on record, both oral as well as documentary, determined the market value of the irrigated land at the rate of Rs.125/- per Are and at the rate of Rs.100/- per Are for non-irrigated land. A specific finding has been recorded by the Reference Court that the appellant is entitled to the price at the rate fixed for irrigated land and that should be for the whole of the Survey Number.

3. The appellant, in this appeal, initially claimed compensation at the rate of Rs.200/- per Are. However, by filing an application being Civil Application No.1376 of 2002, claimed compensation at the rate of Rs.377/- per Are and 10% rise in the market value for each year from the date of relied document (23.4.1974) to the date of notification under Sec.4(1) of the L.A.Act dated 1.3.1979 which comes to five years and accordingly 50% stands to Rs.377/- + Rs.189/- = Rs.565 per Are with the benefit of 30% solatium under Sec.23(2) and interest as per law. The said amendment was made on the ground that the market value of the land is more than Rs.500/- per Are and that the Reference Court has committed an error in not granting compensation at the rate of Rs.377/- per Are by ignoring the Sale Deed at Exh.23, dated 23.4.1974.

4. We have heard Mr.K.L.Dave, learned Advocate appearing for the appellant and Mr.R.M.Chauhan, learned AGP for respondent State, at length. We have also perused the evidence on record.

Learned Advocate Mr.Dave submitted that even though the Reference Court considered various Sale Deeds of the same village the other villages adjoining to village Kodia, has chosen to consider the sale instances as one providing guidelines to determine the market value of the land in Reference, erroneously discarded the Sale Deed at Exh.23 dated 23.4.1974 wherein the land was sold at the rate of Rs.500/- per Are. Learned Advocate invited our attention to the subsequent awards passed by

the Reference Court wherein the market value of the irrigated land was determined at the rate of more than Rs.500/- per Are. It has been further contended that the appeal preferred against those judgments were dismissed not only by this Court but the Apex Court also. In the instant case, the Sale Deed at Exh.23 dated 23.4.1974 was produced through PW5 Dharamsi Nanji at Exh.22 whereby he had purchased the agricultural land bearing Survey No.132/1 admeasuring Acre-1 - 0 Guntha situated in the sim of village Itavya for Rs.20,000/- at the rate of Rs.500/- per Are. In his cross examination, he has stated that he purchased the land under Exh.23 for the purpose of making it an irrigated land. Nothing further has been brought out in the cross examination of this witness making the Sale Deed Exh.23 a doubtful proposition. It appears that the Reference Court has not placed reliance on the Sale Deed at Exh.23 on the ground that the buyer thereof was a very needy man and therefore, a higher price was given. It is not possible for us to subscribe our views with the reasoning of the Reference Court. The lands under Sale Deed Exh.23 are situated at the outskirts of village Kodia and especially the Reference Court has considered the sale instances of the adjoining land as one providing guidelines to determine the market value of the land in Reference, in our opinion, the Reference Court ought to have fixed the rate of the land at the rate not less than Rs.500/per Are.

It is to be noted that the very transaction under the Sale Deed Exh.23 dated 23.4.1974 was considered by this Court in its decision rendered in First Appeal No.1320 of 1999 dated 27th July 1999 (Coram: J.M.Panchal & R.P.Dholakia, JJ.). The said appeal was preferred by the State of Gujarat challenging the judgment and award dated 12th October, 1998 rendered by the learned Extra Assistant Judge, Junagadh in Land Reference Case No.205 of 1991 with respect to land bearing Survey Nos.79/2 and 80 situated at village Kodia belonging to Nanji Bhut Koli, the appellant of the present appeal. The Reference Court in the said case awarded compensation at the rate of Rs.660/- per Are. With respect to the Sale Deed dated 23.4.1974, of Survey No.132/1, the Division Bench of this Court, in its decision has observed as under:

"...Witness Ravjibhai Nanjibhai in his evidence before the Court stated that he had purchased land bearing Survey No.132/1 admeasuring 1 Acre by a registered sale deed dated April 23, 1974 for a sum of Rs.20,000/-. The sale deed dated April 23, 1974 was produced by the witness at

> Exh.20. This witness was also cross examined at length by the learned District Government Pleader, but nothing could be brought on record to doubt his version about the purchase of land bearing Survey No.132/1. The land purchased by witness Ravjibhai was/is situated in village Itavya. The evidence of the witness examined by the claimant including his evidence establishes that both the villages were situated adjoining village Kodiya. The lands which were subject matter of two sale deeds were irrigated lands. Under the circumstances, we are of the opinion that the Reference Court was justified in placing reliance on those two sale deeds for the purpose of ascertaining market value of the lands acquired in the present case, as sale deeds were not only relevant but also were comparable. It is well settled that the best evidence of the value of the property are the sale transactions in respect of acquired lands or in respect of lands which are situated near the acquired lands. The claimant has been able to establish the relevant factor such as time at which the properties were purchased by the purchasers, nature of consideration and the manner in lands which were subject matter of sale deeds and the lands which are acquired in the present case are similar in all respects, those sale deeds offered comparable instances for the purpose of determining market value of the acquired lands and, therefore, they were rightly taken into consideration for the said purpose by the Reference Court.

As aforesaid, since this Court accepted the Sale Deed dated 23.4.1974 being comparable instance for the purpose of determining the market value of the acquired lands and has accordingly confirmed the finding recorded by the Reference Court fixing the compensation at the rate of Rs.660/- per Are, there is no reason for us not to accept the said finding for the purpose of deciding the market value of the land in question in the present appeal. The said decision rendered by the Division Bench was challenged by way of SLP being Special Leave Petition No.7820 of 2000 before the Apex Court. The Apex Court by its order dated 4th December 2000 dismissed the same on the ground of delay as well as on merits. Thus, the judgment rendered by the Division Bench of this Court in First Appeal No.1320 of 1999 dated 27th July 1999 has become final. The appellant is the respondent in the said appeal and as he is a land loser in both

proceedings, a parity as far as receiving compensation is required to be maintained.

The appellant, with respect to his land bearing Survey Nos.79/2 and 80 situated at village Kodia has received compensation at the rate of Rs.660/- per Are while with respect to his land bearing Survey No.43, he has been awarded compensation at the rate of Rs.125/- per Are. The appellant has filed the present appeal in the year 1983 claiming compensation at the rate of Rs.200/per Are. However, in view of the subsequent award passed whereby the Reference Court has awarded compensation at the rate of Rs.660/- per Are, which necessitated him to file an application seeking amendment wherein he has prayed compensation at the rate of Rs.377/- per Are and 10% rise in the market value for each year from the date of relied document to the date of notification. Today we have disposed of the said application by allowing the amendment.

5. In view of the above discussion, we see no difficulty to award compensation at the rate of Rs.377/per Are for the land bearing Survey No.43 admeasuring 647.50 sq.mtrs. situated in the sim of village Kodia. As laid down by this Court in the decision rendered in the case of Special Land Acquisition Officer v. Motibhai Mohanbhai, reported in 1997 (2) GLH 773, the appellant will be entitled to have 10% rise in the market value for each year from the date of relied document, i.e. the Sale Deed Exh.23, dated 23.4.1974 to the date of notification under Sec.4(1) of the L.A. Act, i.e. 1.3.1979, which comes to five years and accordingly by adding 50%, i.e. Rs.189/- to Rs.377/-, the amount comes to Rs.565/-. We accordingly determine the market value of the land in question, i.e. 647.50 Sq.mtrs. x Rs.565 making a total of Rs.3,65,837/-. The appellant, in our opinion, is also entitled to solatium under Sec.23(2) of the L.A. Act at the rate of 15% and interest at the rate of 12% from the date of amendment application i.e. dated 29.11.2001 till realisation on the additional amount of compensation.

6. The appeal is allowed to the aforesaid extenty only. The judgment and award passed in Land Reference Case No.15 of 1980 is modified accordingly. The respondent is directed to deposit the amount awarded under this judgment within ten weeks from the date of receipt of the order of this Court. Appeal is allowed with costs.

(Kshitij R. Vyas, J.)

(Kamal M. Mehta, J.)

Sreeram.